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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/720,489
Filing Date: November 24, 2003
Appellant(s): BILLINGS, ALAN L.

Ronald R. Santucci
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 01, 2008 appealing from the Office action mailed August 09, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,932,756	Franchi	08-2005
5,514,456	Lefferts	05-1996

3,263,799	Bascom et al.	02-1964
JP 10-029252	Toyofuku	02-1998
JP 04-024298 A	Fukuyama et al.	01-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 5 and 10 are unpatentable under 35 U.S.C. §103(a) as applied to Franchi in view of JP 4-24298 (hereinafter merely "JP '298") and further in view of JP 10-29252 (hereinafter merely "JP '252"). Franchi refers to an endless spiral belt similar to that of the claimed invention but fails to disclose the spiral link base is made from metal and is a singlefacer belt. JP '298' discloses the belt can be a doublebacker belt made of metal; JP (252) discloses the use of a singlefacer and doublebacker belt.

Claims 3, 8 and 11 are unpatentable under 35 U.S.C. §103(a) as applied to Franchi in view of JP '252 and further in view of JP '252 and further in view of U.S. Patent No. 3,263,799 to Bascom (hereinafter merely "Bascom"). The combination of Franchi, JP 298' and JP 252' fail to disclose the metal is stainless steel. Bascom et al. discloses an endless spiral conveyor belt made from preferably stainless steel (col. 1, lines 54-55).

Claims 7, 9 and 12 are unpatentable under 35 U.S.C. §103(a) as applied to Franchi in view of JP '252 and further in view of JP '252 and further in view of U.S. Patent No.5, 514,456 to Lefferts (hereinafter merely "Lefferts"). The combination of Franchi, JP 298' and JP 252' fail to disclose the filler means applied to the belt. Lefferts

discloses a spiral link belt comprising filler means disposed in the spiral to reduce air permeability of the belt.

(10) Response to Argument

In page 8 of the Appeal Brief, applicant contended that the references cannot be combined because they do not teach or suggest the use of the element of each other or and that each teaches away from each other, wherein the belt of Franchi is made from synthetic polymer fibers and the belt of JP 298' is metal and therefore teaches away from the teachings of Franchi. In addition, applicant also argues that the belt of Franchi and the belt of JP 298, are for different applications, wherein the belt of Franchi relates to corrugator belts and does not require metal while the belt of JP 298' relates to a coated shoe press belt. In response, it should be noted that function of the belt is not a critical issue in relating to the claims. The belt of Franchi can be made from any suitable material including metal by one of ordinary skill in the art to at strength and accuracy to the belt. Franchi is only concern with weight, friction and energy consumed (see col. 2, lines 32-53). JP 298 is concerned about accuracy, load fluctuation (which is low with fabrics), durability and decreasing stretching (see translation, pages 4 and 5). Therefore, it can be seen that JP 298 has another reason for modify the belt of Franchi. In addition, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally

available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the prior art to JP 298 teaches the use of using metal in the spiral belt for increasing durability and reducing stretching. In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In pages 10-11 of the Appeal Brief, applicant contended that the office action relies on impermissible hindsight. The examiner has traversed such argument because JP 298' clearly teaches the motivation for replacing synthetic fabric with metal (see translation, page 4-5) as stated above. In addition, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In page 14, applicant contended that Bascom et al. fail to teach the belt of claim 1 which is a spiral link base belt made from metal. It should be noted that Bascom clearly teaches a spiral link base being made of metal and most significantly stain steel,

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which has great advantage such as rigidity when carrying heavy loads. Therefore, it would have been obvious to one of ordinary skill to modify the belt of Franchi to include stainless as taught by Bascom et al.

In page 15 of the Appeal Brief, applicant contended that Lefferts fails to teach or disclose the belt of claim 1 and which also includes the filler means disposed with the spirals set forth in claims 5 and 7. It should be noted that the prior Art to Lefferts was to used to provide a spiral base belt being made from metal. Lefferts clearly disclose the filler means for reduce air permeability for a small production cost (see col. lines 1-3, 62-68). Therefore, one of ordinary skill in the art at the time of the invention to modify the belt of Franchi to include fillers as set forth by Lefferts. Therefore, for the reasons stated above, the rejection is deemed proper and should be sustained.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted

/Marcus Charles/

Conferees:

/V. T. L./
Primary Examiner, Art Unit 3682

/Richard WL Ridley/
Supervisory Patent Examiner, Art Unit 3682

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